

493—12.2 (13B,815) Submission and payment of attorney claims.

12.2(1) Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including misdemeanor appeals to district court, postconviction relief and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for work performed after the granting of an application for discretionary review or for interlocutory appeal, or if full briefing is ordered following a petition on appeal, must be submitted on an Appellate form. The claim forms may be downloaded from the state public defender Web site: <http://spd.iowa.gov>. Claims submitted that do not comply with the instructions on the Web site may be returned to the claimant for additional information and resubmission.

b. A copy of all orders appointing the attorney to the case.

(1) The appointment order must be signed by the court and either dated by the court or have a legible file-stamp.

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case and that county is available or a finding that the state public defender was consulted and consented to the appointment.

(3) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these claims. Appointment orders in parole violation cases to which the attorney was appointed on or after May 5, 2005, must also contain the following findings:

1. The alleged parole violator requests appointment of counsel;
2. The alleged parole violator is indigent as defined in Iowa Code section 815.9;
3. The alleged parole violator, because of lack of skill or education, would have difficulty in presenting the alleged violator's version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and
4. The alleged parole violator has a colorable claim that the alleged violation has not been committed, or there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

(4) If the venue is changed in a juvenile case, an order appointing the attorney in the new county must be submitted.

(5) An appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(6) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

d. A copy of any court order that affects the amount to be paid or the client's right to counsel.

e. An itemization detailing all work performed on the case for which the attorney seeks compensation.

(1) The itemization must separately state the date and amount of time spent on each activity. Time may be reported in either tenths or hundredths of an hour on the itemization but must be recorded in tenths of an hour on the claim form. Time listed in hundredths of an hour on the claim form will be reduced to the nearest tenth of an hour.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) The itemization must be in chronological order.

(4) The itemization must be typed in at least 10-point type on 8½" × 11" paper.

(5) If the itemization does not indicate the date of the disposition of the case, a copy of the dispositional order must be attached to the claim.

f. If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization of services performed and how any funds provided were spent during the period prior to the court appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

12.2(2) The state public defender shall forward claims to the department for processing and payment only after all reporting requirements have been complied with and the claim has been approved by the state public defender. Claims returned to the attorney for additional information will be processed after the requested information is received.

12.2(3) Claims submitted prior to the date of service will be returned to the claimant and may be resubmitted for processing after the date of service.

12.2(4) Claims for compensation in excess of applicable rates are not payable under the attorney's appointment and will be reduced.

12.2(5) Claims for services rendered prior to the effective date of the attorney's appointment are not payable under the attorney's appointment, and that portion will be denied.

12.2(6) For cases to which the attorney is appointed after June 30, 2004, claims that are not timely will be denied. Time billed on claims which are denied, or which could have been denied, pursuant to this subrule may be included in subsequent claims if timely submitted with regard to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding shall not be deemed the "same case" as the underlying proceeding.

12.2(7) Claims for services that contain charges that are either not reasonable or not appropriate are not payable under the attorney's appointment and will be denied.

12.2(8) Claims for clerical activities, overhead, preparation of the fee claim or itemization of services; for obtaining, preparing, or reviewing an application or order to exceed the fee limitations; or for preparation of a motion to review or order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney's appointment and will be denied.

12.2(9) Claims for compensation from attorneys whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 will be denied.

12.2(10) Claims for compensation from attorneys appointed as counsel or guardian ad litem at the trial level may be denied if the appointment does not comply with Iowa Code section 815.10.

a. Claims by attorneys whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, shall be denied if the state public defender had filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

(1) The state public defender's designee and any successor designee has withdrawn from the case or has been offered and declined to take the case; or

(2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

b. Claims by attorneys whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, shall be denied unless:

(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment.

12.2(11) Time and expenses claimed by an attorney in withdrawing from a case, or related to withdrawing from a case, in order to either retire from the practice of law or pursue another job will be denied.

12.2(12) The following applies to claims by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding:

a. The court must enter an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child's transition plan under Iowa Code section 232.2 beyond the child's eighteenth birthday.

b. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

c. The guardian ad litem appointment shall end by the earlier of an order of the court relieving the guardian ad litem of further duties or an order of the court closing the juvenile court case.

12.2(13) A court order that affects the amount of a claim and is entered after the date of the state public defender's action, except following court review as provided in rule 493—12.9(13B,815), is void. See Iowa Code section 13B.4(4).

12.2(14) Time and expenses claimed by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed subsequent to the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, will be denied.

[**ARC 8090B**, IAB 9/9/09, effective 9/15/09; **ARC 8372B**, IAB 12/16/09, effective 1/20/10; **ARC 9293B**, IAB 12/29/10, effective 12/7/10; **ARC 9447B**, IAB 4/6/11, effective 5/11/11; **ARC 9938B**, IAB 12/28/11, effective 2/1/12]